

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 30-016-16-1-1-02044-16
Petitioner: Nancy A. Daw and Stephen L. Hoback, co-trustees of the Sagacious Sentinel Sycamore Revocable Trust
Respondent: Hancock County Assessor
Parcel No.: 30-01-35-100-003.000-018
Assessment Year: 2016

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

PROCEDURAL HISTORY

1. Nancy A. Daw and Stephen L. Hoback, co-trustees for the Sagacious Sentinel Sycamore Revocable Trust, timely filed a notice for review with the Hancock County Property Tax Assessment Board of Appeals (“PTABOA”) for the 2016 assessment year. The PTABOA issued its determination valuing the property as follows:

Year	Land	Improvements	Total
2016	\$88,400	\$0	\$88,400

2. The Trustees timely filed a Form 131 petition with the Board. On August 18, 2017, our designated administrative law judge, Timothy Schuster (“ALJ”), held a hearing. Neither he nor the Board inspected the subject property.

Record

3. The following individuals testified under oath: Nancy A. Daw, Stephen L. Hoback, and Mary A. Noe, Hancock County Assessor.
4. The Trustees offered the following exhibits:
 - Petitioner’s Ex. 1: A July 22, 2016 letter to the Hancock County Assessor
 - Petitioner’s Ex. 2: A July 31, 2016 letter to the Hancock County Assessor
 - Petitioner’s Ex. 3: Petitioner’s Memorandum to the Hancock County PTABOA
 - Petitioner’s Ex. 4: A crop production chart from 2008-2015 for 37 tillable acres

- Petitioner's Ex. 5: A copy of the Town of McCordsville Ordinance No. 041001A
- Petitioner's Ex. 6: A copy of *Town of Reynolds v. Board of Commissioners of White County*, 62 N.E.3d 394 (Ind. Ct. App. 2016)
- Petitioner's Ex. 7: A copy of the Petitioner's Notice of Tort Claim to the Hancock County Treasurer, Auditor, and Board of Commissioners
- Petitioner's Ex. 8: A copy of the Town of McCordsville Ordinance No. 041007B
- Petitioner's Ex. 9: A copy of the Town of McCordsville Ordinance No. 040913
- Petitioner's Ex. 10: A copy of *City of Fort Wayne v. Sw. Allen Cty. Fire Prot. Dist.*, 2017 Ind. App. LEXIS 339 (Ind. Ct. App. Aug. 10, 2017)
- Petitioner's Ex. 11: A copy of the reference materials used for calculating corn and soybean crop production from 1985-2015

5. The Assessor offered the following exhibits:

- Respondent's Ex. A: Subject property record card,
- Respondent's Ex. B: Aerial photograph of the subject property and surrounding land.
- Respondent's Ex. C: Certification of Agricultural Land Base Rate for Assessment Year 2016 from the Indiana Department of Local Government Finance,
- Respondent's Ex. D: Serial overlay showing the soil productivity factors for the subject property
- Respondent's Ex. E: Soil Productivity Factors for Hancock County, Indiana,
- Respondent's Ex. F: *Vaughan v. Wabash Township Assessor and Tippecanoe County Assessor*, (IBTR September 15, 2004).

6. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeal; (2) all orders, notices, and memorandum issued by the Board or our administrative law judge; and (3) the digital recording of the hearing.

7. The property under appeal is located in Hancock County, Indiana. The property has no assigned street address but has frontage on W 650 N.

Contentions

8. Summary of the Petitioners' case:

- a. The Trustees argued that the Town of McCordsville improperly annexed the subject property. Because of the alleged improper annexation, they argued they were illegally billed for utility services. The McCordsville Stormwater Utility issued the

Trustees a delinquent tax bill of \$2,262.52. In addition, the Trustees argued that the Town of McCordsville does not have the statutory authority to act as a drainage board under Indiana Law. *See Daw testimony; Pet. Ex. 2, 3, & 7.*

- b. The Trustees admitted that the Board does not have authority to void the annexation ordinance. Daw stated, “I understand that this Board does not have the authority to void [the ordinance], but we intend to go to the Tax Court because this involves the collection of a tax and it arises under the tax laws.” Daw further stated that the Trustees need a Final Determination from the Board so that they could proceed to the Tax Court. *Daw testimony.*
- c. Daw also testified that the Town of McCordsville acted as a drainage board contrary to Indiana Law. As a result of this, she alleged that a number of taxes and fees imposed on the subject property were improper. *See Daw testimony; Pet. Ex. 2, 3, & 7.*
- d. The Trustees also argued that they were entitled to a reduction in property taxes based on the crop production of the property. In support of this, Hoback presented evidence and testimony, which he argued showed the property was less productive than the Indiana average. Based on this testimony, the Trustees requested a negative adjustment to their agricultural assessment. *See Hoback testimony; See Pet. Ex. 4.*
- e. The Trustees also argued that several sections of the property amounting to 1.05 acres should be classified as nontillable land rather than tillable. Approximately half of the 1.05 acres consists of a strip along the western edge of the property, which Hoback called a “wildlife trail.” The other half consists of two sections on the southwest corner of the property, which he called “windbreaks.” *Hoback testimony; Daw testimony, Resp’t Ex. B.*
- f. The strip in question runs along a portion of the western edge of the subject property from W County Road 650 N up to the classified forest. Daw testified that she measured it and found it was 1,485 feet long by 16 feet wide. She also testified that it is no longer used for access, it is overgrown, and that trees from a neighboring property hang over it. Hoback testified that the woods to the west make it “impossible to get in with equipment because of the low hanging branches.” *Hoback testimony; Daw testimony; Resp’t Ex. B.*
- g. Hoback and Daw also testified that there are two “tree and brush covered” sections to the east and to the north of a separate 0.99-acre parcel. These make up the balance of the 1.05 acres they request be reclassified as nontillable. They measured the sections then checked those measurements by subtracting the tilled acreage, classified forest acreage, and right of way acreage from the total acreage of the property. *Daw testimony; Hoback Testimony; Pet. Ex. 3; Resp’t Ex. B, D.*

9. Summary of the Assessor's case:
 - a. The Assessor argued that the Indiana Board of Tax Review does not have the authority to hear the legality of annexation ordinance. The Respondent notes that the Indiana Board of Tax Review is a creature of statute and only has authority to the extent the statute provides. She refers us to Indiana Code § 6-1.5-4-1, which explains the categories of our authority under Indiana Code. She also cites *Matonovich v. State Bd. of Tax Comm'rs*. The Respondent contends that the annexation claim should be dismissed for lack of jurisdiction. *See* Ind. Code § 6-1.5-4-1; *See Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999).
 - b. Mary Noe, the Hancock county Assessor, testified in support of the current assessment. She indicated that she applied the land type, soil productivity, and agricultural base rates to the legal description of the property as prescribed by the Indiana Department of Local Government Finance. She also testified that her office did not physically examine the 1.05 acres the Trustees alleged is misclassified. *Noe testimony*.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. Where an assessor has the burden and fails to meet it, the taxpayer may introduce evidence to prove the correct assessment. If neither party shows what the correct assessment should be, it reverts to the previous year's level. I.C. § 6-1.1-15-17.2(b).
11. The Trustees conceded that the burden of proof has not shifted. We agree and find the Burden of Proof rests with the Trustees. *Hoback testimony*.

Analysis

A. Annexation and Drainage

12. The Trustees argued that the subject property was improperly annexed, and that as a result illegal taxes were imposed. In response, the Assessor argued that the Indiana Board of Tax Review does not have the authority to void the annexation ordinance. The Trustees apparently agree, but believe that the Indiana Tax Court has authority to hear this case because it involves the collection of a tax. The Board is a creation of the Indiana Legislature and its powers are limited in scope to those conferred by statute. *See Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). No statute gives the Board authority to determine the validity of an annexation, so we

cannot address that claim. Nor can we address whether the taxes imposed as a result of the annexation were lawful, because that would require us to rule on the validity of the annexation.

13. The Trustees also alleged that the Town of McCordsville improperly acted as a drainage board in violation of the law. Again, the Trustees pointed to no authority that allows the board to review actions of a drainage board. We do note that the Indiana Legislature has provided landowners the ability to appeal actions of the drainage board to the local court. Ind. Code § 36-9-27-106.

B. Valuation

14. The Trustees made two arguments about the valuation of the property. First, they argued that they are entitled to a reduction in land value based on below average crop production. Second, they argued that a 1.05-acre wildlife trail and windbreak should be re-classified as Type 5-Nontillable land.
15. The subject property has been assessed as agricultural land. While normally a party must present market-based evidence to prove the value of the property at issue, agricultural land is assessed according to specific statutes and regulations. The legislature has directed the DLGF to use distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.
16. The Trustees argued that they are entitled to a reduced assessment because the subject property was not as productive as compared to the statewide averages. They presented no legal authority for their argument. Even were we to accept that their evidence proves below average production, the legislature has mandated that agricultural land is assessed using the guidelines and soil productivity factors, not the actual production of the property in question.
17. Finally, the Trustees argued that 1.05 acres of the subject property should be re-classified as Type 5—Nontillable land instead of Type 4—Tillable land. According to the 2011 Real Property Assessment Guidelines, Type 5—Nontillable land is defined as “land covered with brush or scattered trees with less than 50% canopy cover...” Daw and Hoback both offered testimony that the strip along the western edge of the property was overgrown with trees hanging over it. Hoback also testified that the two “windbreaks” were covered with brush and scattered trees. They also measured those sections.

18. The evidence on this issue is somewhat scant. Although the Trustees did testify that each section of the 1.05 acres was overgrown or covered with brush, that was largely the extent of their testimony. It would have been helpful for the Trustees to provide additional evidence such as a survey, photographs of the property in question, or a detailed map. Nevertheless, we find their evidence minimally sufficient to establish a prima facie case that 1.05 acres of the property should be reclassified as nontillable land. With a prima facie case established, it was up to the Assessor to rebut that evidence. She did not dispute any of the Trustees claims on this issue, nor did she offer any evidence to the contrary. The only testimony offered was that she relied on the legal description of the property in making her assessment. We find this insufficient to rebut the Trustees' evidence on this issue.

FINAL DETERMINATION

19. The Indiana Board of Tax Review has no authority to address either the annexation or drainage claims. The Trustees failed to establish a prima facie case for a reduction in the assessed value based on below-average crop production. The Trustees did show that a portion of the property should be re-assessed as nontillable land. We order 1.05 acres of the land currently classified as Type 4—Tillable, consisting of the western edge of the south of the classified forest and the two “windbreaks” described in the testimony, be reassessed as Type 5—Nontillable and for the Assessor to apply the appropriate agricultural values according to the Guidelines.

ISSUED: January 17, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.